

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
MAPLETON GRAIN COMPANY Monona County, Iowa	NO. 2009-AQ-03 NO. 2009-SW-04

TO: Toni Elmquist, Registered Agent
Mapleton Grain Company
111 N. Front Street
Mapleton, Iowa 51034

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Mapleton Grain Company for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition and disposal of three commercial buildings in Mapleton, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Marion Burnside
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8443

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On April 3, 2008, Marion Burnside, DNR asbestos coordinator, received an inquiry from DNR Field Office 4 regarding the demolition of several commercial buildings in Mapleton, Iowa.

2. On April 4, 2008, Mr. Burnside conducted an inspection in the city of Mapleton (City). Mr. Burnside began the investigation at City Hall and learned that Mapleton Grain Company was the owner of three commercial buildings in the City. The buildings included a pole building and a bike shop located at 207 N. 4th Street and the lumberyard building located at 101 Main Street. Mapleton Grain Company had hired Anderson Construction Co., Inc. (Anderson Construction) to demolish the three buildings. The City provided Mr. Burnside with an application and permit that Mapleton Grain Company had submitted and received. Mapleton Grain Company stated the buildings would be demolished and burned in a hole. The application was granted a permit by the Mapleton Fire Department. Mr. Burnside informed the City that it could not issue this type of permit. During the inspection, Mr. Burnside noted that Anderson Construction had bulldozed the buildings, placed the debris in a hole and was in the process of burning the debris during Mr. Burnside's inspection. Mr. Burnside required the fire department to put the fire out. Mr. Burnside noted floor tile debris in the demolition debris. He collected samples of the suspect material. Mr. Burnside determined that neither Mapleton Grain Company nor Anderson Construction had conducted a thorough asbestos inspection of the three buildings and had not submitted the required demolition notification to the DNR.

3. On April 7, 2008, Mr. Burnside submitted the samples collected during the inspection on April 4, 2008 to the University of Iowa Hygienic Laboratory for asbestos analysis. On April 11, 2008, DNR received the results of the analysis. The floor tile sample contained 12% Chrysotile asbestos and the mastic sample contained 10% Chrysotile asbestos.

4. On June 19, 2008, DNR issued a Notice of Violation letter to Mapleton Grain Company for the violations in connection with the demolition and burning of the commercial buildings in the City. The violations included failure to inspect, failure to notify, failure to remove all regulated asbestos prior to demolition, failure to adequately wet all asbestos containing material, failure to have a trained supervisor on site, failure to remove all asbestos containing material prior to intentional burning, failure to follow the waste disposal requirements, and open burning. Mapleton Grain Company was required to obtain the services of an asbestos abatement contractor and properly remove the debris from the demolition sites and the burn piles. The debris was required to be taken to the landfill as asbestos containing material. A Notice of Violation was also issued to Anderson Construction.

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5. On July 22, 2008, Mapleton Grain Company requested approval to bury the onside debris from the demolition. On August 6, 2008, DNR Field Office 4 denied the request because the material was all considered to be asbestos containing material. The letter stated that all remaining material and soil is considered asbestos containing material and must be must properly disposed of at the Monona County landfill. Mapleton Grain Company has submitted its cleanup notice to the DNR. On November 20, 2008, the landfill receipts for the cleanup were submitted to the DNR.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mapleton Grain Company hired Anderson Construction Company to demolish the three commercial buildings. The buildings were demolished, placed in a hole, and burned. The debris was burning when Mr. Burnside conducted his inspection on April 4, 2008. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the buildings. The above facts indicate a violation of this provision.

5. 40 CFR 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the buildings. The above facts indicate a violation of this provision.

6. 40 CFR 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the

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procedures. The facts in this case indicate that Mapleton Grain Company was not in compliance with these provisions when the demolitions occurred.

7. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During an inspection on April 4, 2008 Mr. Burnside found that the asbestos containing material, in the form of floor tile and mastic, had not been removed prior to the demolition. The facts in this case indicate that Mapleton Grain Company was not in compliance with these provisions.

8. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During an inspection on April 4, 2008, Mr. Burnside found dry asbestos containing material, in the form of floor tile and mastic. The facts in this case indicate that Mapleton Grain Company was not in compliance with this provision.

9. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition and disposal of the buildings despite the fact regulated asbestos containing material was being disturbed by the demolition activities.

10. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During an inspection on April 4, 2008 Mr. Burnside found dry asbestos containing material that had not been contained. The above facts indicate noncompliance with this provision.

11. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

12. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the buildings was placed in a hole and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

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THEREFORE, it is hereby ordered and Mapleton Grain Company agrees to do the following:

1. Mapleton Grain Company shall pay a penalty of \$6,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$6,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed Mapleton Grain Company to save time and money. Additionally, Mapleton Grain Company saved time and money by not properly inspecting the buildings for asbestos and notifying the DNR of the demolition. Based on the above considerations, \$500.00 is assessed for this factor.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. \$2,500.00 is assessed for the asbestos and open burning violations cited in this administrative consent order and \$1,500.00 is assessed for the solid waste violation cited in this administrative consent order for a total of \$4,000.00 being assessed for this factor.

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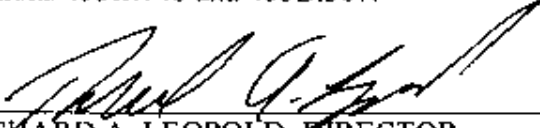
Culpability - Mapleton Grain Company has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the Mapleton Grain Company. For that reason, Mapleton Grain Company waives the rights to appeal this order or any part thereof.

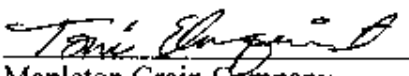
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 4 day of
March, 2009.



Toni Engquist
Mapleton Grain Company

Dated this 19th day of
February, 2009.

Barb Stock (Con 10-6 Monona County); Kelli Book; Marion Burnside; DNR Field Office 4;
EPA; VI.C, VII.C.1, and VII.C.4